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THE CATHOLIC JUST WAR TRADITION AND THE WAR IN IRAQ: JUST PRE-EMPTIVE WAR, JUST HUMANITARIAN INTERVENTION?

DANIEL R. STRECKER[†]

INTRODUCTION

In response to the attacks of September 11, 2001, the Bush administration outlined a military strategy for confronting the twin threats of international terrorism and so-called “rogue regimes”—states aggressive in their intent, dismissive of international norms, and untrammelled by customary international law. This National Security Strategy comprised two historically fraught principles: preemptive war against incipient national-security threats and replacing totalitarian governments with representative democracies.¹

The Catholic just war tradition provides an analytical framework for gauging the morality of applying these two principles. Just war recognizes that using force to pre-empt imminent attacks *may* be a form of justifiable defensive warfare.² Humanitarian intervention, which has gained legitimacy in the international consciousness since the Cold War’s end, may likewise be permissible in just war theory as an outgrowth of just war’s natural law foundation and emphasis on Christian charity.³

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¹ See THE WHITE HOUSE, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 15 (2002) [hereinafter U.S. SECURITY STRATEGY] (“To forestall or prevent . . . hostile acts by our adversaries, the United States will, if necessary, act preemptively.”); THE WHITE HOUSE, *Introduction to THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA*, *supra* (“We will defend the peace by fighting terrorists and tyrants. . . . We will extend the peace by encouraging free and open societies on every continent.”).

² John F. Coverdale, *An Introduction to the Just War Tradition*, 16 PACE INT’L L. REV. 221, 242 (2004).

³ See RICHARD J. REGAN, JUST WAR: PRINCIPLES AND CASES 69 (1996); James Turner Johnson, *Thinking Morally About Intervention*, 1999 PACEM 181, 185–86

The United States sought to make both pre-emptive war and the spread of democracy a reality when it invaded Iraq in March, 2003, with “regime change” as its object.⁴ The United States believed Iraq’s possession and pursuit of nuclear, biological, and chemical weapons (“NBC weaponry”) posed an unacceptable threat regionally, as well as to the United States itself.⁵ In addition, the Iraqi people lived under conditions that deprived them of basic human rights; and the United States believed that removing President Saddam Hussein from power and establishing a democratic government in Baghdad would alleviate those conditions.⁶

This Article uses the just war framework to examine these dual justifications for the Iraq War.⁷ It will ask whether the United States was justified in waging pre-emptive warfare. It will then ask whether conditions in Iraq and the foreseeable success of an invasion justified the United States’ humanitarian resort to arms. Part I will lay the conceptual and moral foundation of just war theory. It will also show how that

(1999) [hereinafter Johnson, *Thinking Morally*], available at <http://www.pacem.no/1999/2/pdf; infra Part I.C>.

⁴ This Article will not address the just war implications of the war in Afghanistan or what the Bush administration referred to as the global “War on Terror.” See generally JEAN BETHKE ELSHTAIN, *JUST WAR AGAINST TERROR: THE BURDEN OF AMERICAN POWER IN A VIOLENT WORLD* (2003). I will refer to the war conducted in January and February of 1991 to expel Iraqi forces from Kuwait as the “Persian Gulf War.” When referring to the War initiated in March of 2003 to institute “regime change” in Iraq, I will use the expressions “War in Iraq,” “Iraq War,” or simply, “the War.”

⁵ Iraq did not, in fact, possess these weapons in 2003, and whether it ever sought them in the decade preceding the invasion has been called into serious doubt. For example, the much-hyped “mobile biological laboratories” never materialized; and aluminum tubes, allegedly intended for uranium centrifuges, turned out to be artillery shell components. See David Barstow, *How White House Embraced Suspect Iraq Arms Intelligence*, N.Y. TIMES, Oct. 3, 2004, at 1; Joby Warrick, *Lacking Biolabs, Trailers Carried Case for War*, WASH. POST, Apr. 12, 2006, at A1. I will attempt, however, to evaluate the United States’ resort to war—particularly with respect to its pre-emption case—in light of what was known and widely believed before the invasion rather than what turned out to be the case afterward.

⁶ See generally Lawrence F. Kaplan, *Regime Change*, NEW REPUBLIC, Mar. 3, 2003, at 21.

⁷ The basic inquiry is two-fold, comprising the *jus ad bellum* (the “right to make war”—that is, the conditions under which it is morally justifiable to initiate or enter armed conflict) and the *jus in bello* (the “law of war”—that is, moral restraints once armed conflict has begun). See JAMES TURNER JOHNSON, *JUST WAR TRADITION AND THE RESTRAINT OF WAR: A MORAL AND HISTORICAL INQUIRY* xxii–xxiii (1981). See *infra* Part II.A for a more complete discussion of the criteria traditionally falling under each of these concepts.

foundation can serve as the moral justification for humanitarian intervention. Part II will discuss the traditional just war criteria of just cause, right authority, overall proportionality, and reasonable hope of success. It will also relate these criteria to pre-emptive warfare and describe how they must be uniquely understood in the context of humanitarian intervention. Part III will apply the criteria to critique the moral justifications for invading and occupying Iraq.

I. FOUNDATIONAL PRINCIPLES : JUST WAR AND JUST HUMANITARIAN INTERVENTION

Just war's analytical framework, while developed over centuries primarily to address the moral problems of symmetrical conflicts—whether between kingdoms or nation-states—can also evaluate humanitarian intervention. In particular, just war's respect for the human community and conviction that war may at times be required to vindicate the Christian law of love make just humanitarian intervention a moral possibility. These principles are not innovative in just war theory, but are, in fact, evident in some of the tradition's oldest thought.

A. *Natural Law Principles as the Foundation for Morally Evaluating War*

To understand just war theory, one must also understand general principles of Catholic natural law theory, particularly as they relate to human communality. In Catholic thought, God gave human beings, upon creation, access to God's eternal law.⁸ Through likewise divinely endowed faculties of reason, and aided by scriptural revelation, humankind can know and use this eternal law to guide its decisions in matters where its will is free.⁹ Absent this guidance, human beings cannot live in harmony with their own natures, in domestic society, or

⁸ See G. E. M. Anscombe, *The Justice of the Present War Examined*, in *WAR IN THE TWENTIETH CENTURY: SOURCES IN THEOLOGICAL ETHICS* 125, 126 (Richard B. Miller ed., 1992).

⁹ See *id.* ("Aquinas called [the process of discovering the natural law through reason] 'the participation in the eternal law of the rational creature.'").

internationally; through conformity to it, human beings can properly fulfill their nature, as individuals and collectively, in the manner ordained by God.¹⁰

Just war theory presupposes this communal understanding of human fulfillment when morally evaluating war.¹¹ Just war posits that, if human beings are ordained to a common good, they therefore have a mandate to organize to defend that good from attack.¹² The process of just war reasoning, then, is the process of inquiring whether, in the conduct of defending that good, humanity is observing the natural law.¹³

B. Making War Moral: Charting a Middle Way to Peace

By thus applying moral reasoning to the conduct of war, just war theory purports to reject the simplistic—or even sentimental—assumptions of pacifism on the one hand and the amorality and cynicism of political realism on the other. In the estimate of John Courtney Murray, Christian pacifism is “an unqualified embrace of the principle of non-violence.”¹⁴ Pacifism rejects any use of force or violence as immoral because force and violence contravene the Christian law of love as embodied in the Sermon on the Mount.¹⁵ In sharp contrast to absolute pacifism, political realism bases its notion of good statecraft on national self-interest and, thus, employs force whenever it serves that

¹⁰ See *id.* at 125–26.

¹¹ See Robert L. Phillips, *Reply to Professor Cady*, in ROBERT L. PHILLIPS & DUANE L. CADY, *HUMANITARIAN INTERVENTION: JUST WAR VS. PACIFISM* 77, 78 (1996).

¹² See *id.*

¹³ See Anscombe, *supra* note 8.

¹⁴ JOHN COURTNEY MURRAY, *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION* 238 (Image Books 1964).

¹⁵ *Id.* The relevant passage reads:

You have heard that it was said, “An eye for an eye and a tooth for a tooth.” But I say to you, Do not resist an evildoer. But if anyone strikes you on the right cheek, turn the other also

You have heard that it was said, “You shall love your neighbor and hate your enemy.” But I say to you, Love your enemies and pray for those who persecute you, so that you may be children of your Father in heaven.

Matthew 5:38–39, 43–45 (NRSV).

interest.¹⁶ In the realist worldview, moral analysis is largely irrelevant¹⁷ and brutality and political violence may be acceptable means to the end of maintaining national power.¹⁸

Despite these apparent differences, however, Murray points out that at the root of pacifism and realism there is a common presupposition: an “antinomy between war and morality.”¹⁹ Essentially, both attitudes perceive a total moral rupture between war and peace, whereby morality, confined wholly to the world of peace, completely evaporates as soon as there is war.²⁰ Just war theory rejects this dichotomy as not only false, but dangerous, because it represents an “abdication of the moral reason” that humans must *always* employ to the end of human fulfillment.²¹ Instead, by its reasoning process, just war attaches morality to war and seeks to safeguard what peace remains in war’s event.²²

While just war theory shares with pacifism a recognition of the Christian law of love, it diverges from pacifism in its recognition that this law not only permits the use of force, but may require it. Paul Ramsey compellingly illustrates this recognition by reference to the parable of the Good Samaritan who, moved with pity after coming upon the wounded traveler on the road to Jericho, bandaged him, carried him to an inn, and paid the innkeeper to shelter him.²³ Ramsey asks whether, in addition to this “ambulance theory of Christian charity,” it might also be an act of charity “to maintain and serve in a police force along the Jericho road to prevent such things from happening to travelers.”²⁴ More provocatively, Ramsey asks, “What do you imagine Jesus would have had the Samaritan do if in the story

¹⁶ See Johnson, *Thinking Morally*, *supra* note 3, at 185.

¹⁷ See John Kelsey, ‘Just War’: *The Details*, CHI. TRIB., Nov. 10, 2002, at C1. Theoretically, from a realist perspective, moral analysis could be relevant in determining, for example, whether the use of force would rouse domestic or international political opposition.

¹⁸ See ELSHTAIN, *supra* note 4, at 56.

¹⁹ MURRAY, *supra* note 14, at 253.

²⁰ See *id.* at 256–57.

²¹ See *id.* at 254.

²² See *id.* at 257.

²³ See Luke 10:25–37 (NRSV).

²⁴ Paul Ramsey, *Is Vietnam a Just War?*, in WAR IN THE TWENTIETH CENTURY: SOURCES IN THEOLOGICAL ETHICS, *supra* note 8, at 185, 185. While Ramsey is himself not a Catholic, nevertheless, he writes within and contributes to the just war tradition. See James F. Childress, *Just-War Criteria*, in WAR IN THE TWENTIETH CENTURY: SOURCES IN THEOLOGICAL ETHICS, *supra* note 8, at 351, 355.

he had come upon the scene when the robbers had just begun their attack and while they were still at their fell work?"²⁵ The use of force under this circumstance does not violate the Christian will to peace; rather, it is an affirmation of that will because without justice, law, and order, there cannot be peace.²⁶

Finally, just war theory seeks to account for the nature of the human world. Because the world is fallen, human beings cannot perfect governance.²⁷ And yet Christians, unless they are to withdraw into ascetic isolation, must assume the burden of earthly rule without condemning its methods outright—instead accepting that resort to them may be necessary.²⁸ One of these methods is warfare; and, so, anyone assuming authority must be prepared to resort to it—though only in a manner in keeping with Christian morality.²⁹

C. *The Move to Humanitarian Intervention: The Moral Obligation To Intervene*

The communal goods toward which humanity is ordained belong exclusively to no one and may make it morally imperative that one state interfere in the internal affairs of another state.³⁰ Moreover, human beings cannot fulfill these goods on the individual level, but must do so in communion, even internationally.³¹ For within nation-states, communal fulfillment

²⁵ Ramsey, *supra* note 24, at 186.

²⁶ See MURRAY, *supra* note 14, at 246–47.

²⁷ See ELSHTAIN, *supra* note 4, at 51.

²⁸ See *id.* at 51, 56.

²⁹ See *id.* at 52, 56. Elshtain reaches this conclusion in part by reference to Jesus' exhortation, "Give . . . to the emperor the things that are the emperor's, and to God the things that are God's," *Matthew* 22:21 (NRSV), and Paul's, "Let every person be subject to the governing authorities," *Romans* 13:1. See ELSHTAIN, *supra* note 4, at 51–52; see also Robert P. George, *Just War in Iraq*, AMERICANVALUES.ORG (Dec. 2002), http://www.americanvalues.org/html/1b__robert_george.html ("It is a tragic fact of human affairs that sometimes statesmen cannot fulfill their moral duties to prevent aggression and resist tyranny relying exclusively on diplomatic or other non-military means.").

³⁰ See Robert L. Phillips, *The Ethics of Humanitarian Intervention, in HUMANITARIAN INTERVENTION: JUST WAR VS. PACIFISM*, *supra* note 11, at 1, 10 [hereinafter Phillips, *Humanitarian Intervention*].

³¹ See *id.* ("For Christianity, all men are creations of the same Father and spring from the same primordial parents. Human fate is thus tied to this intimacy of communion. There are no foreigners."). As expressed by the United States Conference of Catholic Bishops: "[H]uman life, human rights and the welfare of the human community are at the center of Catholic moral reflection on the social and political order. Geography and political divisions do not alter the fact that we are all

can be realized by the internal *polis*; however, there is no global *polis*, and so responsibility for achieving global communion may fall to civilized states acting supranationally.³² This responsibility to achieve and safeguard such basic human goods can, potentially, demand armed intervention against the territory of other states where there are major violations of justice or humanitarian need.³³ As Pope John Paul II wrote—linking the achievement of communal good to safeguarding and protecting human rights:

[A]n offense against human rights is . . . an offence [sic] against humanity itself. The duty of protecting these rights therefore extends beyond the geographical and political borders within which they are violated. Crimes against humanity cannot be considered an internal affair of a nation. . . . We must thank God that in the conscience of peoples and nations there is a growing conviction that human rights have no borders, because they are universal and indivisible.³⁴

When these human rights, said John Paul, are imperiled on a large-scale, “it is legitimate *and even obligatory* to take concrete measures to disarm the aggressor.”³⁵

The view that circumstances may require armed action in defense of other nations is an admixture of the Christian law of love and a realistic appraisal of the realities of peace. As discussed in relation to the parable of the Good Samaritan, the law of love can be interpreted to require force, particularly when it is necessary to defend one’s neighbor from brutality.³⁶ Internally, this requirement falls to the public authorities, who must at times resort to force to safeguard the good of their community from attack³⁷; love of neighbor, however, goes further,

one human family, and indifference to the suffering of members of that family is not a moral option.” UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *The Harvest of Justice is Sown in Peace*, § 2.E.4 (1993) [hereinafter *USCCB Letter*], available at <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/the-harvest-of-justice-is-sown-in-peace.cfm>.

³² See Phillips, *Humanitarian Intervention*, *supra* note 30, at 11.

³³ Johnson, *Thinking Morally*, *supra* note 3, at 184.

³⁴ POPE JOHN PAUL II, MESSAGE FOR THE CELEBRATION OF THE WORLD DAY OF PEACE: PEACE ON EARTH TO THOSE WHOM GOD LOVES! ¶ 7 (Jan. 1, 2000), (emphasis omitted), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121999_xxxiii-world-day-for-peace_en.html.

³⁵ *Id.* ¶ 11 (emphasis added).

³⁶ See *supra* text accompanying notes 23–26.

³⁷ See Coverdale, *supra* note 2, at 226.

possibly requiring public authorities to employ force on behalf of neighboring communities whose common good is imperiled by internal circumstances.³⁸ In determining whether such action is necessary, leaders cannot sacrifice justice to false notions of peace.³⁹ For, while resorting to warfare is always morally tragic, permitting massive crimes and injustices may be more so.⁴⁰ Under these disordered circumstances—which are endemic in a broken world—more lives may be lost in “peace” than in warfare, morally obliging nations to sacrifice peace when doing so is necessary to restore justice.⁴¹

While from one perspective, this view appears to be an innovation, it is supported by some of the most ancient just war thinking. For example, in St. Augustine’s view, rooted in conceptions of charity, it was love that motivated one, encountering an evil assailant about to assault an innocent victim, to protect the victim.⁴² St. Augustine’s view was shared by St. Ambrose and St. Thomas Aquinas.⁴³ Applied on an international scale, this conception represents, in fact, less of an innovation than it does a pre-Westphalian conception of the universal community of mankind, one transcending nation-state boundaries.⁴⁴ Thus, in direct contrast to notions of inviolable domestic sovereignty, the earliest manifestations of just war thought obliged Christian rulers to remedy systematic injustices in neighboring realms.⁴⁵

³⁸ See ELSHTAIN, *supra* note 4, at 54 (describing the necessity, in the context of failed states such as Somalia, to resort to force “to stop predators from killing and starving people outright”); *supra* text accompanying notes 33–35.

³⁹ See ELSHTAIN, *supra* note 4, at 54; *see also id.* at 56 (“For pacifists, the reigning word is *peace*. . . . For just war thinkers, the reigning word is *justice*.”).

⁴⁰ *See id.* at 54.

⁴¹ *See id.* at 50–51; *supra* text accompanying notes 27–29.

⁴² See JOHNSON, *supra* note 7, at 6–7. The United States Conference of Catholic Bishops refers to this scenario as “St. Augustine’s classic case: love may require force to protect the innocent.” *See USCCB Letter, supra* note 31, § 2.E.4; *see also* ELSHTAIN, *supra* note 4, at 57 (describing St. Augustine’s view that force may be justified to “protect[] the innocent from certain harm”).

⁴³ See ELSHTAIN, *supra* note 4, at 51.

⁴⁴ See Coverdale, *supra* note 2, at 239.

⁴⁵ See Phillips, *Humanitarian Intervention, supra* note 30, at 12.

II. JUST WAR CRITERIA IN PRE-EMPTION AND HUMANITARIAN INTERVENTION

To aid rulers in applying just war theory's foundational precepts, the just war process employs traditional criteria to determine whether going to war is morally justified or required. Broadly, these criteria fall into two categories: *jus ad bellum* criteria governing the decision to engage in warfare and *jus in bello* criteria governing military conduct once hostilities have begun.⁴⁶ This Article will concern itself primarily with *jus ad bellum* criteria.⁴⁷

A. Traditional *Jus Ad Bellum* Criteria

Just war theorists formulate *jus ad bellum* criteria in different but similar ways⁴⁸; nevertheless, a survey reveals a general consensus. The first three criteria are considered foundational. They are, in Samuel Turner Johnson's formulation: "*right authority*, historically understood as sovereign political authority, that which has no superior; *just cause*, classically defined as defense against attack, recovery of persons and property wrongly taken, and punishment of evil; [and] *right intention*."⁴⁹ In addition to these foundational criteria, theorists have developed three prudential criteria in light of history and experience. They are: "*overall proportionality*, [requiring] that a judgment be made that the good done by the resort to force will outweigh the evil; *reasonable hope of success*, a calculation of likelihood that the resort to force

⁴⁶ See JOHNSON, *supra* note 7, at 6–7.

⁴⁷ One formulation articulates four *jus in bello* criteria: (1) the immediate aim of combat must be to incapacitate, not to kill—thus necessitating humane treatment of prisoners of war; (2) direct attacks against non-combatants are absolutely prohibited; (3) infliction of unnecessary suffering (for example, through the use of "dum-dum" rounds—that is, hollow-point bullets) and destruction are prohibited; and (4) incidental loss of non-combatant life must be justified by the objectives achieved in combat. See Childress, *supra* note 24, at 362–63.

⁴⁸ See Johnson, *Thinking Morally*, *supra* note 3, at 182 (articulating six *jus ad bellum* criteria). But see James Turner Johnson, *Just-War Tradition and the War in the Gulf*, in *WAR IN THE TWENTIETH CENTURY: SOURCES IN THEOLOGICAL ETHICS*, *supra* note 8, at 449, 449 [hereinafter Johnson, *Just-War Tradition*] (articulating seven *jus ad bellum* criteria); see also Childress, *supra* note 24, at 359 (including the requirement of a formal declaration of war).

⁴⁹ Johnson, *Thinking Morally*, *supra* note 3, at 182. Right intention "is shaped by the pursuit of a just cause [and] also encompasses motives. For example, as Augustine . . . [has] insisted, hatred is ruled out." Childress, *supra* note 24, at 360.

would achieve its just purposes; and *last resort*.⁵⁰ This Article will concern itself primarily with the criteria of right authority, just cause, overall proportionality, and reasonable hope of success.

B. Jus Ad Bellum Criteria and Pre-Emptive War: Contemporary Considerations

1. Just Cause

Just war theory does not always require nations to await actual attack before resorting to force; rather, nations may sometimes, as a form of self-defense, strike the first blow to prevent a threatened attack.⁵¹ The requirement that a nation, to be justified in waging war, have not fired the first shot is relatively new—traceable to the Kellogg-Briand Pact and the United Nations Charter; just war theory has accepted the possibility of pre-emptive force since the time of St. Augustine.⁵² For example, Grotius, writing in the seventeenth century, condoned military action against “an injury not yet inflicted [but] which menaces either persons or property.”⁵³

Nevertheless, the right has traditionally been circumscribed, licensing pre-emptive force against only truly imminent threats.⁵⁴ Grotius, while sanctioning the possibility of pre-emptive force, rejected the proposition that “the bare possibility that violence may be some day turned on us gives us the right to inflict violence on others.”⁵⁵ Rather, to justify pre-emptive force, just war theory requires a high likelihood of a serious and imminent

⁵⁰ Johnson, *Thinking Morally*, *supra* note 3, at 182. The requirement of last resort does not obligate states to exhaust literally every non-violent means—a nearly impossible demand; rather, states must reasonably exhaust all available non-violent means. *Id.*

⁵¹ See REGAN, *supra* note 3, at 51.

⁵² See JOHNSON, *supra* note 7, at 30.

⁵³ Coverdale, *supra* note 2, at 242.

⁵⁴ See James Turner Johnson, *Using Military Force Against the Saddam Hussein Regime: The Moral Issues*, FOREIGN POLICY RESEARCH INSTITUTE (Dec. 4, 2002) [hereinafter Johnson, *The Moral Issue*], http://www.fpri.org/enotes/america_war.20021204.johnson.militaryagainsthussainmoralissues.html (“[P]reemption is inherently neither wrong nor right, but it is extremely difficult to justify. There must be a clear and present danger.”).

⁵⁵ Coverdale, *supra* note 2, at 243.

attack, one that is unlikely to be averted by means short of war.⁵⁶ Just war theory distinguishes legitimate pre-emptive force against a grave and imminent menace from less legitimate preventive force against a distant danger—for example, a nascent threat that may eventually erode a balance of power and lead to instability.⁵⁷ Such preventive wars are harder to justify because, while war is bound to be costly in terms of human life and material destruction, the speculative danger of a nascent threat may never materialize, or may be warded off by means short of war.⁵⁸

Some just war theorists have argued that the imminence requirement should, in response to contemporary strategic realities, be defined more widely. Theorists developed the imminence requirement at a time when military buildups were more clearly identifiable—for example, large-scale mobilization of troops at borders.⁵⁹ In the present era, acquisition of NBC weaponry by so-called “rogue states”—nations that have already established their aggressive intent and that cannot be expected to conform to international norms—has complicated matters.⁶⁰ States can develop NBC weaponry in secret and, once it is obtained, its destructiveness in combination with a regime’s already known aggressive intentions might mean that the time for defense will have passed.⁶¹ Thus, in these circumstances, an

⁵⁶ See REGAN, *supra* note 3, at 52 (“[T]he justice of a preemptive strike requires that the would-be victim nation have moral certitude about the hostile intentions of the putative would-be aggressor nation, and that the targets of the preemptive strike pose a credible threat to the would-be victim nation’s security.”); David Blankenhorn et al., *Pre-Emption, Iraq, and Just War: A Statement of Principles*, AMERICANVALUES.ORG (Nov. 14, 2002), http://www.americanvalues.org/html/1b__pre-emptionp.html (“[P]re-emption can be morally justified only in rare circumstances—when the attack is likely to be imminent, the threat is grave, and preventive means other than war are unavailable.”).

⁵⁷ See Coverdale, *supra* note 2, at 243; Michael Walzer, *Inspectors Yes, War No. No Strikes*, NEW REPUBLIC, Sept. 30, 2002, at 19, 21.

⁵⁸ Walzer, *supra* note 57, at 21 (“[J]ust-war theorists have never looked on th[e] argument [for preventive war] with favor because the danger to which it alludes is not only distant but speculative, whereas the costs of a preventive war are near, certain, and usually terrible.”).

⁵⁹ See Joe Feuerherd, *Preemption, Aggression, and Catholic Teaching*, NAT’L CATH. REP., Oct. 25, 2002, at 13.

⁶⁰ See Brad Roberts, *NBC-Armed Rogues: Is There a Moral Case for Preemption?*, in CLOSE CALLS: INTERVENTION, TERRORISM, MISSILE DEFENSE, AND “JUST WAR” TODAY 83, 92 (Elliott Abrams ed., 1998).

⁶¹ See Walzer, *supra* note 57, at 20.

imminent threat may exist even before NBC weaponry has been acquired, provided the "rogue" regime is developing and likely to use it.⁶²

2. Right Authority

While right authority to wage war traditionally vested in the highest authority of a particular nation, in the pre-emption context it may vest in supranational bodies.⁶³ Because pre-emptive action necessarily involves responding to indistinct threats, right authority is morally essential.⁶⁴ This imperative arises from the danger that a state may exploit pre-emption in pursuit of its own narrow self-interest and at other states' expense, arrogating to itself the unilateral right to determine when a threat is imminent and, in effect, putting itself above the law.⁶⁵ Yet just war theory adopted the right authority requirement to prevent the domestic social chaos of brigands' and minor nobles' raising armies and waging private wars.⁶⁶ Today, a nation's claiming the right unilaterally to determine when a speculative threat has given rise to the necessity of pre-emption risks elevating that domestic chaos to the international level.⁶⁷ For this reason, deferring the authority to make that determination to international bodies—and the United Nations in particular—may be necessary to establish the moral right to wage pre-emptive war.⁶⁸

⁶² See Roberts, *supra* note 60 ("The acquisition of weapons of mass destruction . . . can confirm an intent to injure, create a positive danger, and raise the risks of waiting."); Feuerherd, *supra* note 59 ("[Imminent threat] may refer . . . to murderous capabilities an outlaw regime is in the process of developing[.] [i]f one can make a strong case that the use of such capabilities is highly likely.") (quoting Jean Bethke Elshtain, *A Just War?*, BOSTON GLOBE, Oct. 6, 2002, available at <http://www.americanvalues.org/html/elshtainjustwar.html>); George, *supra* note 29 ("Pre-emptive action is 'defensive' when it is motivated by a reasonable belief that a proven aggressor is in the process of equipping himself with the military means to carry out further aggression with impunity.").

⁶³ See Coverdale, *supra* note 2, at 248, 252–53.

⁶⁴ That is, indistinct in comparison to an open attack by one nation against another. See Roberts, *supra* note 60, at 97.

⁶⁵ See *id.* at 97–98. Presumably, there is less likelihood of a nation's exploiting the right to self-defense in the event of open, demonstrable aggression.

⁶⁶ See Coverdale, *supra* note 2, at 248.

⁶⁷ See generally Blankenhorn et al., *supra* note 56 (describing the danger of licensing states to unilaterally initiate wars in the absence of an actual attack).

⁶⁸ See Roberts, *supra* note 60, at 96, 101–02 ("[The United Nations] is the only institution that aspires to represent the interests of the whole community of nations, and thus the only one with strong moral authority in purporting to defend those

3. The Remaining Prudential Criteria

The remaining *jus ad bellum* criteria also take on unique characteristics in the pre-emption context. States considering pre-emptive action must carefully consider the criteria of reasonable chance of success and overall proportionality in light of the fact that no attack has occurred.⁶⁹ In such an instance, there is a lack of certainty about the measures a would-be aggressor might take in retaliation; furthermore, there is a lack of certainty as to what harm pre-emptive action will avert, and whether that harm would have been greater or lesser than the inevitable destruction and hardship of war.⁷⁰

C. *Jus Ad Bellum* Criteria and Humanitarian Intervention

1. Just Cause

The suffering of innocents at the hands of aggressors in other states justifies resort to force as a subset of the classical just cause of defense against attack.⁷¹ The justness of resorting to force in this instance originates in the obligation to defend the innocent in one's own community from unjust external aggression.⁷² Because of the universal nature of human good, this obligation of defense can extend to an obligation to defend the innocent in neighboring communities from internal aggression.⁷³ Thus, defending innocent parties from unjust

interests."). But see George Weigel, *The Just War Tradition and the World After September 11*, 51 CATH. U. L. REV. 689, 712 (2002) ("The manifest inability of the United Nations to handle large-scale international security questions suggests that assigning a moral veto over [pre-emptive] U.S. military action . . . to the Security Council would be a mistake.").

⁶⁹ See Roberts, *supra* note 60, at 87.

⁷⁰ See *id.*; Walzer, *supra* note 57.

⁷¹ See Johnson, *Thinking Morally*, *supra* note 3, at 182; *supra* text accompanying note 49.

⁷² See Coverdale, *supra* note 2, at 226; *supra* text accompanying note 38.

⁷³ See ELSHTAIN, *supra* note 4, at 150 ("[T]he just war tradition . . . holds that the governments and citizens of one country may be called upon to protect citizens of another country, or a minority within that country, who are not in a position to defend themselves from harm."); *supra* text accompanying note 39.

aggression can be added to the traditional formulations of just cause.⁷⁴ An example of such intervention would be preventing a state from carrying out genocide against an internal minority.⁷⁵

In addition, aggression against innocents in neighboring states by their own regime can furnish just cause as a subset of punishment of evil, another classic source of just cause.⁷⁶ Punishment of evil was the principle justification for war in Thomist just war theory.⁷⁷ In its contemporary understanding, punishment of evil takes the form of righting wrongs and, in particular, defending human rights.⁷⁸ This justification for resort to force can rise to the level of a duty to undertake armed humanitarian intervention to depose and replace regimes as a punishment for gross violations of their citizens' human rights.⁷⁹

2. Remaining Criteria in Contemporary Humanitarian Intervention

Grave humanitarian emergency, however, does not of itself warrant intervention, and before resorting to force a state must carefully consider all the ramifications of taking action.⁸⁰ This caution arises in part from the nature of war itself: A state must appreciate that war is likely to have far-reaching consequences, consequences that may not be readily apparent in advance of hostilities.⁸¹ Pope John Paul II, for example, even while decrying the 20th Century's "endless and horrifying sequence of . . . genocides and 'ethnic cleansings,'" nevertheless warned, "[W]ars are often the cause of further wars [and

⁷⁴ See ELSHTAIN, *supra* note 4, at 57–58 (formulating just cause as responding "to a specific instance of unjust aggression perpetrated against one's own people or an innocent third party").

⁷⁵ See *id.* at 57.

⁷⁶ See Coverdale, *supra* note 2, at 229–230; Johnson, *Thinking Morally*, *supra* note 3, at 182.

⁷⁷ See Coverdale, *supra* note 2, at 230.

⁷⁸ See *id.*

⁷⁹ See Johnson, *The Moral Issues*, *supra* note 54 (suggesting that regimes may "deserve[] to be deposed and replaced because of their evil behavior").

⁸⁰ See Johnson, *Thinking Morally*, *supra* note 3, at 184 ("[There are] serious limits on what at first looks to be virtually an out-and-out moral argument for military intervention as a response to injustice whenever and wherever it appears. There are times when, despite the presence of grave injustice, good statecraft may require a decision against intervention.").

⁸¹ See MURRAY, *supra* note 14, at 250 (noting that the just war calculus must pay due regard "for the tinderbox character of our world in which a spark may set off a conflagration").

they] . . . generally do not resolve the problems for which they are fought and therefore, in addition to causing horrendous damage, they prove ultimately futile.”⁸²

For this reason, the state’s moral obligation does not conclude at determination of the justness of its cause and rightness of its intention; its obligations extend to judicious consideration of the prudential *jus ad bellum* criteria.⁸³ With respect to overall proportionality, a state must examine whether intervening in a given situation will ultimately do more harm than good—that is, whether intervening will ultimately give rise to more violence and suffering than that intended to be averted.⁸⁴ This is because, while attempting to avert a harm of one kind, the state may inadvertently unleash forces of far greater destructive potential.⁸⁵ Moreover, the state must exercise careful judgment about its chances of success—whether, for instance, the people intended to be benefited actually welcome intervention or will resist the efforts of the intervener.⁸⁶ For history has shown that the benevolent aspirations of the intervening state may not resonate with the local population, and that even the best of intentions cannot substitute for operational competence.⁸⁷

From these practical realities, certain cautionary principles emerge. With respect to probability of success, states must be realistic about the extent to which they can actually help their neighbors.⁸⁸ Interveners will have the highest chance of success on missions with narrowly defined, readily achievable objectives that enjoy broad support among the local population.⁸⁹ Thus, while Pope John Paul II spoke of nations’ “duty” to protect the human rights of persons beyond their borders, he nevertheless

⁸² POPE JOHN PAUL II, *supra* note 34, ¶ 3.

⁸³ See Johnson, *Thinking Morally*, *supra* note 3, at 190.

⁸⁴ See *id.* at 191 (“Every act of intervention has wide-ranging consequences.”).

⁸⁵ See REGAN, *supra* note 3, at 70 (“[I]ntervention for humanitarian reasons . . . might provoke a major war.”).

⁸⁶ See *id.*

⁸⁷ See Phillips, *Humanitarian Intervention*, *supra* note 30, at 3 (“Vietnam and Afghanistan turned sour when the would-be beneficiaries of intervention proved ungrateful or uncomprehending. . . . [T]here is often a very large gap between the (sometimes) good intentions of the interveners and the carrying out of an operation.”).

⁸⁸ See REGAN, *supra* note 3, at 72 (“The world community should . . . resist the Messianic temptation to right every wrong without regard to short- and long-term consequences.”).

⁸⁹ See *id.* at 71–72.

cautioned that any measures of intervention should "be limited in time and precise in their aims."⁹⁰ Additionally, and as has been mentioned, with respect to overall proportionality, states should be mindful of the harms that might issue from armed intervention, and whether those harms will outweigh the evil to be averted.⁹¹ For example, theorists frequently offer the prevention of genocide as a scenario in which the good done—in terms of lives saved—will likely outweigh the violence unleashed.⁹² On the other hand, where a repressive regime has merely engaged in a pattern of human rights abuses, there is a distinct possibility that military intervention will produce more death and suffering than the regime itself can inflict.⁹³

In the context of humanitarian intervention, right authority may vest in supranational bodies and, in particular, the United Nations. Sanctioning humanitarian intervention in principle risks states' taking it upon themselves to embark on "endless wars of altruism" as a pretext for advancing their imperialistic self-interest.⁹⁴ The possibility of such disingenuousness may hinder the success of humanitarian intervention by delegitimizing an intervener's mission in the eyes of the population meant to be benefited.⁹⁵ Even where a state acts out of genuine concern for the local population, it risks being

⁹⁰ POPE JOHN PAUL II, *supra* note 34, at ¶¶ 7, 11.

⁹¹ See *supra* text accompanying notes 84–85.

⁹² See, e.g., ELSHTAIN, *supra* note 4, at 51 (suggesting that, had genocides been confronted on the battlefield earlier, "fewer lives would have been lost over the long run"); John P. Langan, S.J., *Humanitarian Intervention: From Concept to Reality*, in CLOSE CALLS: INTERVENTION, TERRORISM, MISSILE DEFENSE, AND "JUST WAR" TODAY, *supra* note 60, at 109, 109 (making the case that preventing genocide by a repressive regime will likely satisfy the test of overall proportionality). Preventing genocide may satisfy the requirement of overall proportionality because, as John Courtney Murray has said, that determination calculates not just "physical death and destruction," but also "human goods of so high an order that immense sacrifices may have to be borne in their defense"; this is "the moral calculus that is enjoined in the traditional theory of rebellion against tyranny." Murray, *supra* note 14, at 249–50.

⁹³ See Langan, *supra* note 92, at 123; Andrew Natsios, *Complex Humanitarian Emergencies and Moral Choice*, in CLOSE CALLS: INTERVENTION, TERRORISM, MISSILE DEFENSE, AND "JUST WAR" TODAY, *supra* note 60, at 125, 132 ("Violating a person's right to a fair trial and committing genocide are both human-rights abuses, but they are of a profoundly different character. The United States cannot guarantee the former outside its own borders; the latter it can, as a matter of policy, actively oppose.").

⁹⁴ USCCB Letter, *supra* note 31, § 2.E.4.

⁹⁵ See Phillips, *Humanitarian Intervention*, *supra* note 30, at 11.

incapable of objectively evaluating the *jus ad bellum* criteria, an analysis that can be better undertaken in an objective international forum.⁹⁶ Finally, because the United Nations aspires to represent the interests of the international community, it possesses the moral authority to authorize war outside of the rubric of strict self-defense.⁹⁷ For these reasons, Pope John Paul II cautioned that, before embarking on humanitarian intervention, states should make “[t]he fullest and the best use . . . of all the provisions of the United Nations Charter.”⁹⁸ Moreover, states should, when contemplating intervention, use the opportunity as one for strengthening international cooperation and institutions rather than weakening them.⁹⁹

III. JUST WAR AND THE WAR IN IRAQ

Evaluated on the basis of these principles, the United States’ invasion of Iraq in March, 2003 may not have satisfied the just war tradition’s *jus ad bellum* requirements. The Hussein regime’s treatment of its citizenry and international aggression may have been sufficiently unconscionable to furnish just cause for an invasion on grounds of humanitarian intervention. It is only debatable, however, whether the threat posed by the Hussein regime was sufficiently imminent and defined to furnish just cause for pre-emption. With respect to both pre-emption and humanitarian intervention, the lack of international support—particularly from the United Nations and considering the United States’ tepid efforts to gain support there—suggests that America may not have possessed right authority to go to war.” And finally, with respect to both pre-emption and humanitarian intervention, it is doubtful that there was sufficient probability of success, or that there was adequate potential of overall proportionality, to justify war.

A. *Iraq: Humanitarian Intervention and Just Cause*

Saddam Hussein’s regime exhibited moral blameworthiness in both its domestic and international conduct. It is estimated that the purges that followed Hussein’s consolidation of power in

⁹⁶ See *id.* (“Just as an individual is not a proper judge in his own case, so a nation is not either.”).

⁹⁷ See REGAN, *supra* note 3, at 72–73; Roberts, *supra* note 60, at 92.

⁹⁸ POPE JOHN PAUL II, *supra* note 34, ¶ 11.

⁹⁹ See USCCB Letter, *supra* note 31, § 2.E.4.

1979 resulted in the deaths of at least 500 political opponents, and Hussein employed imprisonment, torture, execution, and deprivation of civil liberties to maintain control over the rest of the population thereafter.¹⁰⁰ Shortly after taking power, in 1980, Hussein initiated a war of aggression against neighboring Iran that, upon its termination without appreciable success, had cost the lives of 200,000 Iraqis, wounded hundreds of thousands more, and taken a similar toll on Iran.¹⁰¹ In 1982, after an assassination attempt on Hussein, his regime terrorized and oppressed citizens of the Shiite town of Dujail, executing some 148 men and boys without trial.¹⁰² In 1988, at the close of the war with Iran, Hussein ordered a mustard gas attack against the Kurdish town of Halabja that killed approximately 5,000 civilians, including women and children, and wounded 10,000 more.¹⁰³ In 1990, Iraq again initiated a war of aggression, invading Kuwait without provocation.¹⁰⁴ Afterward, Iraq expropriated Kuwait's oil fields; announced its annexation of Kuwait; terrorized Kuwaiti civilians with acts of murder, rape, and torture; and launched indiscriminate Scud missile attacks against Israel.¹⁰⁵ At the close of the Persian Gulf War to expel Iraq from Kuwait, once the United States and coalition forces had abandoned their posture of aggression, Hussein brutally crushed uprisings by Shiites and Kurds.¹⁰⁶ Following the war, Iraq suffered under a sanctions regime tied to arms control agreements.¹⁰⁷ Though Iraq was entitled to trade oil for aid in the form of food and medicine, Hussein siphoned funds from the

¹⁰⁰ See Neil MacFarquhar, *Saddam Hussein, Defiant Dictator Who Ruled Iraq with Violence and Fear*, N.Y. TIMES, Dec. 30, 2006, at A10.

¹⁰¹ See *id.*

¹⁰² This, in fact, was the offense for which Hussein would later be sentenced to death. See John F. Burns & Kirk Semple, *Hussein Is Sentenced to Death by Hanging*, N.Y. TIMES, Nov. 6, 2006, at A1.

¹⁰³ See MacFarquhar, *supra* note 100.

¹⁰⁴ See JEFFREY L. DUNOFF ET AL., INTERNATIONAL LAW: NORMS, ACTORS, PROCESS 837 (3d ed. 2010).

¹⁰⁵ See *id.* Iraq's invasion of Kuwait had the effect of alleviating Iraq's enormous debt to Kuwait, incurred as a result of its war with Iran; putting Iraq in the position of controlling all of Kuwait's oil wealth and, potentially, billions of dollars of Kuwaiti assets held in foreign banks; signaling to other nations in the region that non-compliance with Iraqi oil price policies would come with consequences; and giving Iraq access to the Persian Gulf. See *id.* at 837-38. The Persian Gulf War has been estimated to have cost the lives of 150,000 Iraqis. See MacFarquhar, *supra* note 100.

¹⁰⁶ See MacFarquhar, *supra* note 100.

¹⁰⁷ See *id.*

program to strengthen his control apparatus, thus depriving his citizens of desperately needed resources.¹⁰⁸ All the while, the regime continued to imprison, torture, and murder its people.¹⁰⁹

In the run up to the 2003 war, the United States repeatedly invoked these conditions, and the prospect of alleviating them by establishing a democratic government in Iraq, to justify overthrowing the Hussein regime.¹¹⁰ The Bush administration announced the spread of democracy as one of the principle elements of its national security strategy.¹¹¹ Additionally, in justifying an invasion as moral, the United States argued that after it removed Hussein, it would democratize Iraq, a step that would lead to further political and economic liberalization in the rest of the Middle East.¹¹² This justification played a significant role in garnering support for the war among the United States' political left.¹¹³

Under these circumstances, it would be difficult to argue that there was not just cause for humanitarian intervention in defense of the people of Iraq, or else to punish the evils perpetrated by the Hussein regime. States must defend their citizens from attack, and natural law principles, together with Christian obligations of charity, extend this obligation to defense of persons in other nations endangered by internal threats.¹¹⁴ Moreover, punishment of evil is one of the most ancient justifications for war; and in contemporary understanding, this justification includes punishing the repeated human rights abuses of oppressive regimes.¹¹⁵ Hussein's government, over the course of almost twenty-five years, repeatedly engaged in such

¹⁰⁸ See ELSHTAIN, *supra* note 4, at 87–88; MacFarquhar, *supra* note 100.

¹⁰⁹ See MacFarquhar, *supra* note 100.

¹¹⁰ See *infra* notes 111–113 and accompanying text.

¹¹¹ See U.S. SECURITY STRATEGY, *supra* note 1, at iii (“Freedom is the non-negotiable demand of human dignity; the birthright of every person—in every civilization.”).

¹¹² See Kaplan, *supra* note 6 (quoting President George W. Bush as saying, “Liberty for the Iraqi people is a great moral cause”); David E. Sanger, *A New Doctrine for War*, N.Y. TIMES, Mar. 18, 2003, at A1 [hereinafter Sanger, *A New Doctrine*] (quoting an address by Bush to the Iraqi people: “In a free Iraq . . . there will be no more wars of aggression against your neighbors, no more poison factories, no more executions of dissidents, no more torture chambers and rape rooms. The tyrant will soon be gone. The day of your liberation is near.”); Paul Starr, Editorial, *A War for Democracy?*, AM. PROSPECT, Apr., 2003, at 3.

¹¹³ See Kaplan, *supra* note 6, at 21; Starr, *supra* note 112.

¹¹⁴ See *supra* Part I.C.

¹¹⁵ See *supra* text accompanying notes 76–78.

abuses—he was known as one of the most brutal autocrats of the modern era.¹¹⁶ Thus, the United States likely satisfied the just cause requirement for humanitarian intervention in Iraq.

B. Iraq: Pre-Emption and Just Cause

The argument that pre-emptive necessity furnished just cause for a war with Iraq is less strong. In the 1980s, Hussein's regime engaged in efforts to develop NBC weaponry.¹¹⁷ It is known, for example, that Hussein employed chemical weapons against his own population and built a nuclear reactor at Osirik.¹¹⁸ During the Persian Gulf War, Hussein refrained from using such weaponry, but inspections instituted in its aftermath revealed research programs, caches of dangerous materials, and stockpiles of weapons.¹¹⁹ Though these programs, materials, and weapons were dismantled and destroyed, Iraq continually balked at its arms-control obligations, eventually leading to the complete interruption of inspections.¹²⁰ In the years leading up to the Iraq War, it was debated whether Saddam possessed biological and chemical weapons, and it was generally believed that Iraq had some biological and chemical capabilities that it was seeking to enhance. While it was not seriously believed that Iraq possessed nuclear capabilities, the Bush administration argued that Iraq was vigorously pursuing them.¹²¹

Importantly, the Hussein regime was also known to be erratic and had demonstrated its aggressiveness. As discussed, Hussein had initiated two wars of aggression: first against Iran and then against Kuwait.¹²² Hussein had menaced other nations in the region and—unprovoked—fired Scud missiles at Israel.¹²³ Finally, the regime had used chemical weapons against its

¹¹⁶ See MacFarquhar, *supra* note 100 ("The hanging of Saddam Hussein ended the life of one of the most brutal tyrants in recent history."); *supra* text accompanying notes 100–09.

¹¹⁷ See MacFarquhar, *supra* note 100.

¹¹⁸ See *id.* The reactor was destroyed in an Israeli airstrike in 1981. See *id.*

¹¹⁹ See Walzer, *supra* note 57, at 20.

¹²⁰ See DUNOFF ET AL., *supra* note 104, at 850, 857; Walzer, *supra* note 57, at 20.

¹²¹ See Barstow, *supra* note 5 (discussing the infamous aluminum tubes that the administration trumpeted as components for the uranium enrichment process, and Iraq's alleged attempts to secure "yellowcake," a form of concentrated uranium, from sources in Niger).

¹²² See MacFarquhar, *supra* note 100.

¹²³ See *id.*

Kurdish population.¹²⁴ These factors contributed to Iraq's apparent threat. It was believed that if Iraq obtained the nuclear weapons it was seeking, it was likely to use them, and that it was likely to use the weapons it already had obtained. Additionally, its disdain for international law and norms, and its already established patterns of aggression, heightened the possibility that it could transmit such arms to terrorist groups, or even engage in acts of terrorism of its own.¹²⁵

Nevertheless, it is only debatable whether Iraq posed a sufficient threat to justify pre-emptive warfare. In traditional just war theory, while pre-emption is not categorically forbidden, it is justifiable only in the narrowest of circumstances: against threats that are certain and grave—in other words, against threats that constitute “a clear and present danger.”¹²⁶ In the run up to the invasion, Iraq insisted that it possessed no NBC weaponry, and U.N. inspectors—whom Iraq had begrudgingly re-admitted in its attempt to avoid war—found virtually no evidence of prohibited weaponry or weapons programs.¹²⁷ Also, Iraq made no overt preparations for war, other than defensive ones as invasion became increasingly inevitable.¹²⁸ Even the Bush administration did not argue that Iraq had present nuclear capabilities.¹²⁹ Thus, while Iraq's putative biological and chemical arsenal, its widely believed pursuit of nuclear weapons, and its pattern of aggression may have presented a “clear” danger, because Iraq was not preparing for any actual aggression at the time of the invasion, it is doubtful that its danger was sufficiently “present” to furnish just cause.¹³⁰

¹²⁴ See *id.*

¹²⁵ See Barstow, *supra* note 5.

¹²⁶ Johnson, *The Moral Issues*, *supra* note 54; see Kelsey, *supra* note 17 (“[P]re-emption can be morally justified only in rare circumstances—when an unavoidable attack is likely to be imminent and the threat is grave.”); Cardinal James Francis Stafford, *A Familiar and Unsettling Song of War*, NAT'L CATH. REP., Feb. 14, 2003, at 4 (justifying pre-emption only when nations are “under a very imminent threat”).

¹²⁷ See DUNOFF ET AL., *supra* note 104, at 856 (noting that the only violation these inspections uncovered was Iraq's possession of ballistic missiles whose range modestly exceeded United Nations limits).

¹²⁸ See *id.* at 857–58; Kelsey, *supra* note 17 (noting that there was no evidence that Iraq was about to launch an attack).

¹²⁹ See Walzer, *supra* note 57, at 20.

¹³⁰ Johnson, *The Moral Issue*, *supra* note 54 (“While the administration has made a good case that the danger is clear, it has not demonstrated that it is present, in the sense of an attack *definitely intended and in process of preparation*.” (emphasis added)).

Through a more recent formulation of the imminence requirement, however, an argument that there was just cause for pre-emption has been made. The Bush administration recognized that traditional formulations of just cause for pre-emptive force require an imminent danger, one signaled by the preparatory mobilization of armies and navies. It argued, however, that new realities such as international terrorists and aggressive "rogue states" with avowed destructive intent, combined with the threat posed by weapons of mass destruction, demanded earlier action, even against uncertain threats.¹³¹ Some just war theorists embraced this reasoning in the run up to the war and argued that there might be just cause even where it could not be demonstrated that Iraq was making preparations for an actual attack.¹³²

Just war theorists sometimes caution against applying *jus ad bellum* criteria retrospectively, arguing that only what decision-makers knew—or reasonably should have known—at the time of deciding to use force should be factored into the moral calculus.¹³³ Thus, the fact that Iraq did not possess chemical or biological weapons and was not actively developing or manufacturing them, and that its purported efforts to obtain nuclear weapons appear to have been fictionalized, may not be part of the inquiry into whether going to war there was morally justified.¹³⁴ It can be argued, however, that claiming Iraq possessed or was in pursuit of NBC weaponry, on the basis of the

¹³¹ See U.S. SECURITY STRATEGY, *supra* note 1. Inaction, it argued, might lead to a situation where, with such NBC weaponry already in the hands of "rogue states" or terrorists, it would be too late to take defensive measures. See *id.*

¹³² See George, *supra* note 29 ("[I]t would be perverse to suppose that force may not be used against an aggressive tyrant such as Saddam until after he has armed himself with weapons of mass destruction."); Weigel, *supra* note 68, at 707–08 ("The 'regime factor' is crucial in the moral analysis, for weapons of mass destruction are clearly not aggressions-waiting-to-happen when they are possessed by stable, law-abiding states. . . . If the 'regime factor' is crucial in the moral analysis, can we not say that pre-emptive military action to deny the rogue state that kind of destructive capacity would not contravene the 'defense against aggression' concept of 'just cause'?"); *supra* text accompanying notes 59–62.

¹³³ See Childress, *supra* note 24, at 360 ("[W]hat is 'reasonable' depends on the situations in which actors have to make responsible decisions; retrospective judgments by others should include only what the actors could and should have foreseen.").

¹³⁴ See Barstow, *supra* note 5. Consensus has developed that the reason for Iraq's intransigence in not complying with inspections obligations was the regime's desire to appear to possess or be developing NBC weaponry to maintain leverage over its neighbors. See MacFarquhar, *supra* note 100.

available evidence, was actually quite unreasonable.¹³⁵ At the very least, the fact that the threat posed by the regime turned out to be imaginary only underscores the traditional guidance that pre-emption should remain narrowly circumscribed.¹³⁶ It also adds credence to Walzer's counsel, "[T]he danger to which [pre-emption] alludes is not only distant but speculative, whereas the costs of . . . war are near, certain, and usually terrible."¹³⁷

C. *Iraq: Humanitarian Intervention, Pre-Emption, and Right Authority*

With pre-emption and humanitarian intervention, right authority vests in supranational institutions for reasons of global security and order. Allowing states unilaterally to determine when a threat has become sufficiently pronounced to warrant intervention would be to risk global anarchy.¹³⁸ Similarly, where states take it upon themselves to determine the necessity for humanitarian intervention, there is a risk of sanctioning endless wars of altruism whose moral legitimacy will be undermined by international suspicion—and suspicion amongst the population meant to be benefited—that humanitarian aims are a cloak for self-interested pursuits.¹³⁹ The United Nations has particular authority in this area because only it purports to represent the best interests of states across the world.¹⁴⁰

The United States never gained United Nations support, or broad-based international support, for its venture in Iraq. Security Council Resolution 1441, which called on Iraq to comply with inspections, specifically avoided language that would justify use of force because Russia, China, and France—permanent council members—resisted it.¹⁴¹ Efforts by the United States and the United Kingdom to secure a further resolution authorizing

¹³⁵ See generally Barstow, *supra* note 5 (exhaustively detailing the shoddy intelligence on which the Bush administration actually based its claims that Hussein had biological and chemical weapons and was aggressively pursuing nuclear weapons, and arguing that the administration was aware of the weakness of its case).

¹³⁶ See Kelsey, *supra* note 17 ("Expanding this narrow and exceptional option into a broad doctrine at the center of U.S. foreign policy is inconsistent with the just-war tradition.").

¹³⁷ Walzer, *supra* note 57; *supra* text accompanying notes 54–58.

¹³⁸ See *supra* text accompanying notes 63–68.

¹³⁹ See *supra* text accompanying notes 94–96.

¹⁴⁰ See *supra* text accompanying notes 97–99.

¹⁴¹ See DUNOFF ET AL., *supra* note 104, at 854–55.

force ultimately failed to win support in the Security Council—in fact, the two nations withdrew their draft resolution when it became apparent that, not only would it be the object of a permanent-member veto, but it would not even gain majority support amongst all voting members on the council.¹⁴² Furthermore, international opinion also resisted the invasion—even in the nations that, officially, joined the United States’ “coalition.”¹⁴³

Some theorists have criticized the United Nations for failing to assume moral leadership, thus forcing the United States to take matters into its own hands¹⁴⁴; however, it is questionable whether the United States ever took seriously the obligation to act internationally.¹⁴⁵ The United States did not meaningfully participate in negotiations aimed at convincing Iraq to re-admit inspectors.¹⁴⁶ And the criticism has been made that the United States, while it sought United Nations support for purposes of convenience, was ready to abandon international mechanisms as soon as it did not get its way.¹⁴⁷ Thus, even if there is truth to the proposition that, when international institutions fail to assume moral leadership, that leadership devolves to individual nations, there is little evidence that the United States ever gave the United Nations the meaningful opportunity to assume that leadership.

¹⁴² See *id.* at 856–57.

¹⁴³ See Harold Meyerson, *Clash of Civilizations*, AM. PROSPECT, Apr., 2003, at 30, 30 (noting, at the time of the invasion, the flagging support in England for Prime Minister Tony Blair and in Spain for Prime Minister José Maria Asnar, and overwhelming majority opposition in Eastern European nations that officially joined the United States’ efforts).

¹⁴⁴ See OLIVER O'DONOVAN, *THE JUST WAR REVISITED* 135 (2003) (“[T]he duty of deferring to governmental authority is dependent on the availability of that authority and its capacity to act decisively in a crisis. Just as private citizens may tackle and detain a mugger in the absence of the police, improvising a form of government where the official form is not at hand, so a nation may improvise international justice where international authority is not capable of enacting it.”).

¹⁴⁵ See *id.* (noting the United States’ complicity in weakening the U.N. system).

¹⁴⁶ See Walzer, *supra* note 57, at 19 (“The United States has taken little part in the months-long negotiations aimed at bringing the inspectors back, and it isn’t clear that the administration is prepared to follow up in any serious manner on Iraq’s offer . . . to readmit them.”).

¹⁴⁷ See Meyerson, *supra* note 143; Sanger, *A New Doctrine*, *supra* note 112.

D. Iraq: Humanitarian Intervention, Pre-Emption, and the Prudential Criteria

Whether one characterizes the War in Iraq as one of humanitarian intervention or pre-emption, there is no denying that it has been extremely costly in human terms. Four thousand four hundred and nine United States service members have died serving in Iraq.¹⁴⁸ In addition, 31,927 service members have been wounded in action¹⁴⁹; and nearly one thousand of those wounded have lost a limb or limbs.¹⁵⁰ While insurgent casualties are difficult to ascertain, one count estimated that nearly 20,000 insurgents had died in operations against United States and other coalition forces.¹⁵¹ The most troubling casualty figures are those relating to civilian deaths. Iraq Body Count, which maintains a running tally of civilian deaths based on, among other sources, news reports, morgue records, and figures compiled by non-governmental organizations, reports that between 112,789 and 123,421 civilians have died violently in Iraq since the invasion in March, 2003.¹⁵² Other studies have placed the figure at even more dizzying heights.¹⁵³

¹⁴⁸ See U.S. DEPT OF DEFENSE, OPERATION IRAQI FREEDOM (OIF) U.S. CASUALTY STATUS (last updated May 29, 2013), <http://www.defense.gov/news/casualty.pdf>. This number includes 3,480 combat deaths and 929 “non-hostile” deaths. See *id.*

¹⁴⁹ See *id.*

¹⁵⁰ See Lizette Alvarez, *No Less of a Person*, N.Y. TIMES, July 4, 2010, at MB1 (putting the number at 988).

¹⁵¹ See Jim Michaels, *19,000 Militant Fatalities Since ‘03*, U.S.A. TODAY, Sept. 27, 2007, at 1A.

¹⁵² See IRAQ BODY COUNT (last visited May 29, 2013), <http://www.iraqbodycount.org>. Legitimate news sources have frequently cited Iraq Body Count as authoritative throughout the war. See Michael R. Gordon, *Hints of Progress, and Questions, in Iraq Data*, N.Y. TIMES, Sept. 8, 2007, at A1 (citing IRAQ BODY COUNT tallies and analysis as authoritative); *With Iraq Toll at 4,000, U.S. Vows to Battle On*, INT’L HERALD TRIB., Mar. 25, 2008, at 2 (describing Iraq Body Count’s tally as “widely respected”).

¹⁵³ One study, conducted by researchers at Johns Hopkins University, Al Mustansiriya University in Baghdad, and M.I.T., estimated that 654,965 Iraqis had died as a result of the war, a figure that included both violent deaths (601,027) and deaths from non-violent causes attributable to the invasion—for example, from disease caused by the breakdown of services. See GILBERT BURNHAM ET AL., *THE HUMAN COST OF THE WAR IN IRAQ: A MORTALITY STUDY, 2002–2006* 10 (2006), <http://web.mit.edu/humancostiraq/reports.html>. This study used a method that has been considered legitimate in conflict zones such as Darfur and the Congo. See Sabrina Tavernise & Donald G. McNeil, Jr., *Iraqi Dead May Total 600,000, Study Says*, N.Y. TIMES, Oct. 11, 2006, at A16. For an account of an earlier study by the same researchers that used the same techniques, as well as an exhaustive—and

This bloodbath raises a serious question as to whether the United States satisfied the *jus ad bellum* criterion of overall proportionality. As has been noted, just war theorists have cautioned that, while overall proportionality is likely to be satisfied when humanitarian intervention averts genocide or ethnic cleansing, it is not likely to be satisfied when instituted merely to correct a regime's pattern of human rights abuses.¹⁵⁴ Just war theorists understand that these abuses are deeply tragic; but they also recognize that, while regimes such as Saddam Hussein's are undoubtedly evil, resort to warfare is likely to produce death and suffering far beyond what a repressive regime is able to inflict.¹⁵⁵ As has been discussed, Hussein certainly denied his people basic human rights; and Hussein had perpetrated brazen crimes against humanity upon ethnic and religious groups—the Kurds and Shiites—that can be deemed genocidal.¹⁵⁶ Nevertheless, the Hussein regime was not, in 2003 or the previous decade, in a position to massacre or commit genocide against its people.¹⁵⁷ In fact, no-fly zones aggressively patrolled by American aircraft over the Kurdish north and the Shiite south protected these vulnerable populations.¹⁵⁸

Moreover, the violence into which Iraq descended could have been foreseen. Arguably, coalition forces have not caused the bulk of civilian deaths in Iraq; rather, in the aftermath of the U.S. invasion, Iraqis, driven by political, sectarian, or merely criminal motives have visited vast destruction on their fellow

ultimately heartbreaking—defense of its methods and conclusions, listen to *What's in a Number?*, THIS AMERICAN LIFE (Oct. 28, 2005), <http://www.thisamericanlife.org/radio-archives/episode/300/whats-in-a-number>.

¹⁵⁴ See *supra* text accompanying note 93.

¹⁵⁵ See Langan, *supra* note 92, at 123.

¹⁵⁶ See *supra* text accompanying notes 102–03.

¹⁵⁷ See Blankenhorn et al., *supra* note 56; Walzer, *supra* note 57.

¹⁵⁸ See Blankenhorn et al., *supra* note 56 (“While Iraq’s government is certainly brutal and repressive, there is no evidence, so long as no-fly zones over Iraq are enforced, that Iraq’s government is currently in a position to engage in widespread killings of Kurds or Shiites living in Iraq.”); Walzer, *supra* note 57 (“[N]ow that a zone of (relative) safety has been carved out for the Kurds in the North, there is no compelling case to be made for humanitarian intervention in Iraq. The Baghdad regime is brutally repressive and morally repugnant, certainly, but it is not engaged in mass murder or ethnic cleansing.”).

citizens.¹⁵⁹ Nevertheless, while this fact may be relevant to a *jus in bello* evaluation of the United States' combat operations, the possibility of triggering more extensive violence by resorting to force is a factor that nations are under a moral obligation to take into account before going to war, particularly in the context of humanitarian intervention and pre-emption.¹⁶⁰ And the deep ethnic and religious rifts dividing the people of Iraq were not unknown.¹⁶¹ While the proportionality determination takes into account factors beyond mere human and material destruction—for example, the benefits to peace and order of removing a repugnant regime—it is difficult to see how deposing Hussein could justify the loss of more than 100,000 lives, among other destruction.¹⁶² For these reasons, it is doubtful that the United States satisfied the *jus ad bellum* requirement of overall proportionality—that is, the expected potential for loss of life and destruction exceeded the benefit of deposing the Hussein regime.

Finally, the probability of success may not have been sufficient to justify invasion. Certainly, with respect to pre-emption, the United States was successful in rapidly removing Hussein from power; and had Hussein possessed weapons of mass destruction, these too would have been neutralized.¹⁶³ But, with respect to rebuilding Iraq following Hussein's deposition, the United States met with less success. The United States hoped that its efforts would be greeted with jubilation in the streets of Iraq.¹⁶⁴ Moreover, the United States hoped that this jubilation would be shared across the Middle East, and that the overthrow of Hussein would encourage other nations to moderate

¹⁵⁹ See BURNHAM ET AL., *supra* note 153, at 8; Sabrina Tavernise & Andrew W. Lehren, *A Grim Portrait of Civilian Deaths in Iraq*, N.Y. TIMES, Oct. 22, 2010, <http://www.nytimes.com/2010/10/23/world/middleeast/23casualties.html>.

¹⁶⁰ See REGAN, *supra* note 3, at 69–70; Phillips, *Humanitarian Intervention*, *supra* note 30, at 3; *supra* text accompanying notes 69–70, 80–93.

¹⁶¹ See Starr, *supra* note 112, at 3 (“[A]fter years of despotism and minority [Sunni] control, the deep suspicions among ethnoreligious groups will make it hard even to maintain the country’s political stability.”). The modern Iraqi state was an unnatural imposition by the British on a heterogeneous population of Sunnis, Shiites, and Kurds. See Jon Lee Anderson, *Invasions*, NEW YORKER, Mar. 24, 2003, http://www.newyorker.com/archive/2003/03/24/030324fa_fact?currentPage=1.

¹⁶² See Murray, *supra* note 14, at 249–50.

¹⁶³ David E. Sanger, *With “Good Riddance” to Hussein, Bush Vows Resolve*, N.Y. TIMES, Dec. 16, 2003, at A1.

¹⁶⁴ See Sanger, *A New Doctrine*, *supra* note 112.

and democratize.¹⁶⁵ This popular support never materialized. In fact, three years after the invasion, Iraq had only barely functioning police and military forces, was experiencing sectarian warfare and murder, and the Iraqi government was still unable to provide its citizens with basic services such as electricity, clean drinking water, and sewage removal, not to mention healthcare and education. Moreover, Iraq's neighbors, rather than democratizing, seem bent on undermining the nation and exploiting its instability.¹⁶⁶ There is uncertainty as to whether these results should have been predicted—indeed, assessing “probability of success” is difficult in advance of a war and problematic in hindsight—but their sharp divergence from certain rosy expectations suggest that, at some point, there was a breakdown in realistic deliberation.¹⁶⁷

IV. CONCLUSION TO PARTS I–III

The United States used pre-emption and humanitarian intervention to justify its 2003 invasion of Iraq. Just war tradition limits pre-emption to situations where an aggressor is actually preparing to launch an attack, and Iraq was not making such preparations in 2003. Even if the just cause requirement was satisfied by Iraq's aggressive intentions and purported pursuit of NBC weaponry, the United States did not meet the *jus ad bellum* criteria of likelihood of success, overall proportionality, or right authority. Likewise, Iraq's regime was reprehensible, possibly furnishing just cause for an invasion on grounds of humanitarian intervention. Nevertheless, the grisly results of the invasion, the poor reception of the United States' efforts among the Iraqi people, and international resistance to the invasion suggest that the United States also did not meet the *jus ad bellum* criteria of overall proportionality, likelihood of success, or right authority for humanitarian intervention.

¹⁶⁵ See William Galston, *Perils of Preemptive War*, AM. PROSPECT, Sept. 23, 2002, at 22, 22.

¹⁶⁶ See Michael R. Gordon, *Meddling Neighbors Undercut Iraq's Political Stability*, *Cables Say*, N.Y. TIMES, Dec. 6, 2010, at A11; Hendrik Hertzberg, *Studies Say*, NEW YORKER, Dec. 18, 2006, at 33 (discussing the result of the Iraq Study Group report).

¹⁶⁷ See ELSHTAIN, *supra* note 4, at 62 (“What about the prospect of success? This prudential consideration is always tricky.”).

V. SUPPLEMENTARY COMMENTS ON THE CATHOLIC JUST WAR TRADITION AND THE WAR IN IRAQ: WITHDRAWAL AND THE ETHIC OF PEACE (FEBRUARY, 2012)

A. *Détente?*

Since completing *The Catholic Just War Tradition and the War in Iraq*, America's foreign-affairs landscape has changed. Nevertheless, circumstances do not appear to have altered the just war analysis of American foreign policy in Iraq; in fact, the firestorm the United States ignited in 2003 appears tenacious and dire predictions continue to prove themselves accurate.

On December 15, 2011, President Obama formally announced the end of nearly nine-years of American combat operations.¹⁶⁸ Under Obama's oversight, American forces in Iraq slowly fell to a fraction of their former strength: In 2007, 170,000 Coalition troops occupied Iraq from 505 bases; in December, 2011, 4,000 operated from only two.¹⁶⁹ President Obama has affirmed he will send no additional troops to Iraq, even in the case of civil war, and America's role will be limited to a political

¹⁶⁸ See Editorial, *A Formal End*, N.Y. TIMES, Dec. 16, 2011, at A42. For perspective on the length of the Iraq War, consider it in relation to other American conflicts. The United States openly bombarded Iraq during the night of March 19–20, 2003, and twenty-one days later, Baghdad fell. See *21 Days to Baghdad* (National Geographic video July 1, 2003). During the eight-and-one-half years of warfare that elapsed before President Obama's announcement, the U.S. overthrew Saddam Hussein's regime; established a fragile "democracy"; witnessed the trials and grisly hangings of Hussein and others in his administration; and battled dedicated Baathist, Sunni, Shiite, and otherwise anti-American militants. The Iraq War cut short the lives of some 4,500 American soldiers; tens of thousands of Iraqi militants; and, counted conservatively, at least one-hundred-thousand non-combatant Iraqi civilians. See IRAQ BODY COUNT, *supra* note 152 (displaying a constantly updated estimate of Iraq war casualties based on public records). Consider the duration of other twentieth century American conflicts: U.S. airpower hammered Iraqi forces beginning January 17, 1991, and then, from February 23d and over an additional 100 hours, its ground troops definitively drove the Iraqi Army from Kuwait; American combat forces battled North Vietnam's army and Viet Cong militants for eight years, from 1965 until it commenced withdrawal after the 1973 Paris Accords; the Korean War was active for three years, between June, 1950, and July, 1953; U.S. troops fought in World War II for almost four years, between December, 1941, and August, 1945; and American involvement in World War I lasted roughly one-and-one-half years, between April, 1917, and November, 1918.

¹⁶⁹ See Thom Shanker et al., *In Baghdad, Panetta Leads Uneasy Moment of Closure to a Long Conflict*, N.Y. TIMES, Dec. 16, 2011, at A19; *A Formal End*, *supra* note 168.

one: resolving future conflicts by diplomacy rather than firepower.¹⁷⁰

Our war, then, is virtually complete. But whether war is over for Iraqis is a question that is morally significant to the United States. As our forces return home, Iraqis face the specters of terrorism, oppression, and civil war.¹⁷¹ From a just war perspective, the United States cannot ignore that reality: Because it instigated hostilities, it is obligated toward the nation it leaves behind.¹⁷²

This supplement asks, then, What moral considerations guide this moment in contemporary history? Can we celebrate a war's end or should we lament a moral failure?

B. Iraq Without Occupation

During the United States withdrawal, Iraq has descended further into violence. Occupation did not overcome Iraq's political, religious, and ethnic divisions; rather, a national crisis has emerged and thousands perish in renewed sectarian conflict.¹⁷³ Moreover, the Iraqi police apparatus has allegedly resorted to human rights violations that imitate the Hussein regime's.¹⁷⁴ Additionally unsettling—and surely contributing to the chaos—Iraq's infrastructure and economy remain devastated.¹⁷⁵ Thus, events indicate that this exceedingly long conflict achieved little: Iraq is not at peace and its people suffer from both their new regime and the opponents of that regime.

¹⁷⁰ See Helene Cooper & Thom Shanker, *U.S. Embraces Low-Key Plan in Iraqi Crisis*, N.Y. TIMES, Dec. 25, 2011, at A1.

¹⁷¹ See Michael S. Schmidt, *Explosions Across Iraq Kill Dozens Amid Political Crisis*, N.Y. TIMES, Jan. 5, 2012, <http://www.nytimes.com/2012/01/06/world/middleeast/explosions-across-baghdad-kill-dozens.html?ref=iraq>.

¹⁷² See REGAN, *supra* note 3, at 70 (discussing the obligations of states to consider the secondary and tertiary violence intervention may ignite). Considering these eventualities in advance aligns with the criterion of just cause. See Childress, *supra* note 24, at 360 (stating that right intention is “shaped by the pursuit of a just cause”).

¹⁷³ See Schmidt, *supra* note 171.

¹⁷⁴ See, e.g., Jack Healy, *Iraq Turns Justice into a Show, and Terror Confessions a Script*, N.Y. TIMES, Jan. 8, 2012, at A1 (describing the regime's response to the renewed bouts of terrorism, resort to torture to obtain confessions, and human rights violations like parading accused before news cameras).

¹⁷⁵ See *A Formal End*, *supra* note 168.

C. *Withdrawal: What Contemporary Guidance?*

Pope Benedict XVI has unwaveringly opposed the United States' presence in Iraq. In 2002, then-Cardinal Joseph Ratzinger argued that invading Iraq without United Nations approval was unjustifiable.¹⁷⁶ Likewise, in 2008, Benedict XVI denounced the war as a bloodbath and lamented that innocent Iraqi civilians were being forced to bear "the consequences of a war that provoked the breakup of their civil and social life"—squarely placing moral responsibility for Iraq's internal strife on the United States' invasion.¹⁷⁷

But Benedict's stance does not answer the question presented today: Having invaded—justifiably or not—do we have a moral obligation to stay until we have achieved our goal of establishing a stable democracy with neither the brutality, oppression, and violence of Saddam Hussein's regime, nor the looming threats of terrorism and civil war?¹⁷⁸

D. *Consistent Word from Global Religious Bodies*

By cobbling together three recent statements from the Vatican, the Anglican Church, and the USCCB, an ethical obligation to promote peace and protect human life—an ethic relevant to our endgame in Iraq—begins to take form. In the withdrawal landscape, the criterion that war's object be peace comes to the forefront of the just war analysis.

1. The Vatican

In Pope Benedict's 2012 annual homily on the World Day of Peace, he deplored societies' tendency to subsume the concerns of the broader community to parochial ones.¹⁷⁹ Benedict emphasized patience and perseverance in promoting peace

¹⁷⁶ See Cardinal Ratzinger Says Unilateral Attack on Iraq Not Justified, ZENIT (Sept. 22, 2002), <http://www.zenit.org/article-5398?l=english>.

¹⁷⁷ Nicole Winfield, *Pope: Enough with Slaughters in Iraq*, U.S.A. TODAY (Mar. 16, 2008), http://www.usatoday.com/news/world/2008-03-16-340118605_x.htm.

¹⁷⁸ See generally U.S. SECURITY STRATEGY, *supra* note 1, at 15–16 (outlining the Bush administration's pre-war international objectives).

¹⁷⁹ See POPE BENEDICT XVI, MESSAGE FOR THE CELEBRATION OF THE WORLD DAY OF PEACE: EDUCATING YOUNG PEOPLE IN JUSTICE AND PEACE, §§ 3–4 (Jan. 1, 2012), available at http://www.vatican.va/holy_father/benedict_xvi/messages/peace/documents/hf_ben-xvi_mes_20111208_xlv-world-day-peace_en.html.

because doing so is an “essential task” no one can “shirk.”¹⁸⁰ Benedict elaborated on the meaning of this discipline, almost certainly referring to the Iraq withdrawal:

Peace is not merely the absence of war, and it is not limited to maintaining a balance of powers between adversaries. Peace cannot be attained on earth without safeguarding the goods of persons, . . . respect for the dignity of persons and peoples, and the assiduous practice of fraternity.¹⁸¹

Thus, Benedict alerted humanity to be wary of “false solutions which often seem the easiest way to overcome problems” of conflict, but that are only easy ways out.¹⁸²

2. The Anglican Church

Archbishop of Canterbury Rowan Williams expressed a similar ethic in his 2011 Christmas Sermon.¹⁸³ The Archbishop called on humankind to exhibit “unstinting generosity” and aspire to protect human life.¹⁸⁴ At the same time, he admitted the necessary challenge this aspiration entails, asking, “[A]re you on your own side, on the side of disconnection, rivalry, the hoarding of gifts, the obsession with control? [Yet to] answer that you’re on the side of life doesn’t mean for a moment that you can now relax into a fuzzy philosophy of ‘life-affirming’ comfort.”¹⁸⁵ From Archbishop Williams’ message, we understand that solidarity, serving others, and respecting the duty never to succumb to blind self-interest are unrelenting, even if burdensome, obligations.¹⁸⁶

3. The USCCB

Finally, in a statement issued in February, 2011, the USCCB’s Office of International Justice and Peace (“OIJP”) expressly addressed the Iraq War, withdrawal, and

¹⁸⁰ *Id.* §§ 5–6.

¹⁸¹ *Id.* § 5.

¹⁸² *Id.* § 6.

¹⁸³ See Archbishop Rowan Williams, *Christmas Sermon: Don’t Build Lives on Selfishness and Fear* (Dec. 25, 2011), available at <http://www.archbishopofcanterbury.org/articles.php/2292/>.

¹⁸⁴ *See id.*

¹⁸⁵ *Id.* (characterizing this challenge through a structuralist interpretation of the Anglican *Book of Common Prayer*).

¹⁸⁶ *See id.*

corresponding ethical demands.¹⁸⁷ Though the USCCB urged “full withdrawal at the earliest opportunity,” it also insisted that withdrawal be consistent with “responsible transition.”¹⁸⁸ The OIJP explicitly defined “responsible transition” in context of the Iraq withdrawal:

[Responsible transition] aims to reduce further loss of life, address the humanitarian crisis in Iraq and the refugee crisis in the region, help rebuild the war-torn country, promote political reconciliation in Iraq, protect human rights and religious freedom, and engage international support, including Syria and Iran. The USCCB urges strong action to protect Christians and other minorities. Although the combat phase of U.S. engagement in Iraq has ended, the moral obligation of our nation toward the Iraqi people has not.¹⁸⁹

Put in context, “responsible transition” is consistent with Pope Benedict and Archbishop Williams’ more general exhortations: While circumstances change, while a war may be declared “over,” the ethic of peace presides—unstinting, demanding, skeptical.

E. The Ethic of Peace and the Iraq Withdrawal

From these three bodies, we find an ethic applicable to American withdrawal. The mere absence of a troop commitment does not mean that we have fulfilled our moral obligations to promote peace and safeguard human life. Instead, it remains incumbent on the United States to protect those endangered by the hazards that our military action unleashed—hazards that may persist even after we abandon combat.

Part of our consideration must be whether we can even achieve such protection without a troop presence. The United States, a nation whose resources—human, as well as financial and diplomatic—have been consumed during the invasion and occupation surely welcomes the relief occasioned by withdrawal. Yet taking the “peaceful” route in Iraq—potentially at the expense of the Iraqi community—may be an impermissible abdication of our moral obligations. Because we led Iraq into its

¹⁸⁷ See generally UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, OFFICE OF INTERNATIONAL JUSTICE AND PEACE, BACKGROUND ON IRAQ (2011), available at <http://old.usccb.org/jphd/csmg/2011/2011-02IraqBackgrounderFinalRevision.pdf>.

¹⁸⁸ *Id.*

¹⁸⁹ See *id.*

present straits, appeal to war fatigue will not excuse prioritizing our national comfort at the expense of Iraqis' rights to life, peace, and justice.

CONCLUSION

One wonders, in light of the rapid onset of violence and oppression that followed President Obama's announcement, whether we have, indeed, met this moral obligation. It may be that peace was better served by bringing American troops home—for example, the current violence may be temporary, or ultimately less destructive than the violence occupation engendered. Perhaps self-governance—with American diplomatic engagement and support—is the solution that the Iraqi people need.

Yet, it may also be that our presence in Iraq was essential to suppressing violence in a fragile nation, one in need of an armed power to quell its disputes. Whatever the result, our moral obligations are clear: to promote peace tirelessly without placing our own well being above the Iraqi community's equally legitimate rights to life and safety. Weighing these competing interests cannot be easy; but the moral obligation to do so is inescapable.